AJN

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4684 OF 2005

Shri Gangadhar Vithal Satvi & Ors. ... Petitioners

Vs.

Shri Prabhakar Bhurya Satvi & Ors. ... Respondents

Mr. V.Z. Kankaria h/f. Mr. A.J. Joshi for the petitioners.

Mr. S.G. Deshmukh h/f. Mr. R.D. Suryavanshi for the respondents.

CORAM: SMT. RANJANA DESAI, J.

DATED: 31ST AUGUST, 2005.

P.C.:-

1. The petitioners are the original defendants in R.C. Suit No.111 of 2003 filed by the respondents/plaintiffs in the court of Civil Judge, Junior Division, Palghar. The suit is for partition and separate possession. In this suit, the plaintiffs preferred an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908 (for short, "the CPC") praying for relief that the defendants, their agents or any one else be restrained from taking the goods vehicles from their private land and to restrain the defendants from obstructing their possession over the suit land exclusively owned by them and jointly owned by them.

2. The trial court by its order dated 3/1/2004 dismissed

the application. The plaintiffs filed an appeal in the Court of Additional District Judge, Palghar, being Misc. Civil Appeal No.8 of 2004. By the impugned order, the lower appellate court allowed the appeal. The lower appellate court restrained the defendants from plying trucks on the way which passes through the land of the appellants till the suit is finally decided. The lower appellate court clarified that the defendants can use the said way as a cart way for carrying soil from river vaitarna. This order is challenged before me.

3. I have heard, at considerable length, Mr. Kankaria, the learned counsel appearing for the petitioners and Mr. Deshmukh, the learned counsel appearing for the respondents.

4. Mr. Kankaria, the learned counsel contended that so far as the claim of the plaintiffs in respect of 55 Ares out of Survey No.125, Hissa No.6, which is more particularly described in prayer clause (a) of the plaint and which is purchased from one Ramchandra Chimana Sogale under section 32G of the Tenancy Act is concerned, the defendants are admitting the ownership and possession of the plaintiffs. He contended that the defendants' vehicles or bullock carts are not passing through the said land. Mr. Deshmukh, the learned counsel for the respondents, on the other hand, disputed this and contended that in fact the defendants' trucks and bullock carts are passing through the said piece of land.

5. Since, admittedly this piece of land belongs to the plaintiffs and Mr. Kankaria, the learned counsel for the petitioners/defendants has made a statement that the defendants have no desire to ply their trucks through the said piece of land, I feel the proper course is to direct the trial court to appoint TILR, who can visit the said piece of land admeasuring 55 Ares out of Survey No.125, Hissa No.6, purchased from Ramchandra Chimana Sogale under section 32G of the Tenancy Act and more particularly described in prayer clause (a) of the plaint and demarcate the said land. The plaintiffs and defendants shall, therefore, appear before the trial court on 19/9/2005. On that day, the trial court shall appoint TILR in the light of my order. The trial court shall act on the authenticated copy of this order. TILR shall submit his report within a period of two weeks from the date of his appointment. Once the TILR demarcates the area, the defendants and their vehicles shall not pass through that area. Till TILR completes this exercise, the impugned order shall hold the field and thereafter the impugned order will be applicable only to the said demarcated area of 55 Ares. I have, however, not expressed any opinion on the merits of the case.

6. Writ petition is disposed of in the aforestated terms.

(SMT. RANJANA DESAI, J.)